

NOTICES OF PROPOSED RULEMAKING

Initiated After January 1, 1995

Unless exempted by A.R.S. § 41-01995, each agency shall begin the rulemaking process by first filing a Notice of Proposed Rulemaking, containing the preamble and the full text of the rules, with the Secretary of State's Office. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the Arizona Administrative Register.

Under the Administrative Procedure Act (A.R.S. § 41-1001et seq.) an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the Register before beginning any proceedings for adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

NOTICE OF PROPOSED RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 11. STATE BOARD OF DENTAL EXAMINERS

PREAMBLE

- | <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
|-----------------------------|--------------------------|
| R4-11-501Amend | |
| R4-11-502Amend | |
| R4-11-503Repeal | |
| R4-11-504Amend | |
2. The specific authority for the rule making, including both the authorizing statute (general) and the statutes the rules are implementing (specific):
Authorizing Statute: A.R.S. § 32-1207(A)(1)
Implementing Statute: A.R.S. § 32-1207(A)(1)(a)
3. The name and address of agency personnel with whom persons may communicate regarding the rule:
Name: Veronica M. Marquez
Address: State Board of Dental Examiners
5060 North 19th Avenue, Suite 406
Phoenix, Arizona 85015
Telephone: (602) 255-3696
Fax Number: (602) 255-3589
4. An explanation of the rule, including the agency's reasons for initiating the rule:
These rules were originally adopted in 1974 and amended in 1976 to implement A.R.S. § 32-1207(A), authorizing regulation of supervised and auxiliary personnel. They are being proposed to revise and establish rules regarding the regulation of dental assistants. The rules specifically set forth the procedures and functions a dental assistant may perform under the direct and general supervision of a dentist or dental hygienist. The definition of a dental assistant is being omitted because the definition is set forth in statute. A current rule regarding radiographic duties is being repealed as it is covered in statute (A.R.S. § 32-1291).

Adoption of these rules will benefit the health, safety, and welfare of the public by establishing the specific functions a dental assistant may perform. Specific regulation and enforcement are necessary to properly regulate and control the duties of dental assistants and to make dentists and dental hygienists accountable for auxiliary personnel.
5. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:
Not applicable.
6. The preliminary summary of the economic, small business, and consumer impact:
These rules will impact dental assistants, dentists, dental hygienists, and consumers. There may be minimal monetary costs to dental professionals associated with the implementation of these rules.

Quality of care is improved because the rules provide clear guidance regarding procedures and functions a dental assistant may perform. Consumers benefit because the dentist and dental hygienist have assistance in providing dental care.
7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:
Name: Veronica M. Marquez

Arizona Administrative Register
Notices of Proposed Rulemaking

Address: State Board of Dental Examiners
5060 North 19th Avenue, Suite 406
Phoenix, Arizona 85015

Telephone: (602) 255-3696

Fax: (602) 255-3589

8. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if not proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:
No public proceeding is scheduled. A person may submit written comments or request that an oral proceeding be held on the proposed rules by submitting the comments or a written request for hearing no later than 5 p.m., February 5, 1996, to the person listed above.
9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
Not applicable.
10. Incorporations by reference and their location in the rules:
None.
11. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 11. STATE BOARD OF DENTAL EXAMINERS

ARTICLE 5. REGULATION OF DENTAL ASSISTANTS

Section

- R4-11-501. Definitions
- R4-11-502. Duties of a dental assistant under supervision: Procedures and Functions of a Dental Assistant Under Supervision
- R4-11-503. Radiographic Duties
- R4-11-504. Limitations on Duties of Dental Assistants

ARTICLE 5. REGULATION OF DENTAL ASSISTANTS

R4-11-501. Definitions

- A. "Dental assistant" means any person who acts as an assistant to a dentist in rendering services to a patient involving close physical proximity to the patient while under treatment, undergoing diagnostic procedures, or under observation.
- B-A. "Direct supervision and control" means that a licensed dentist must be physically present in the operatory and actually performing principal services is present in the office and available to provide immediate treatment or care to the patient and observe the work of the dental assistant.
- C. "Personal supervision" means the licensed dentist must be present in the office and must see the patient and assign the work to be done. The dentist is available to check the work as it progresses and must approve the completed work.
- B. "General Supervision" means the licensed dentist is available for consultation, whether or not in the office, regarding treatment which the dentist has authorized and for which the dentist remains responsible.
- C. "Irreversible procedure" is a single treatment or part of a multistep series of treatments which cause change in the affected hard or soft tissues that is either permanent or requires reconstructive or corrective procedures.

R4-11-502. Duties of a dental assistant under supervision: Procedures and Functions of a Dental Assistant Under Supervision

- A. A dental assistant may ~~do and~~ perform the following acts and duties procedures and functions under the direct supervision and control of a licensed dentist, which the licensed dentist shall be personally and professionally responsible and liable for any all consequences or results arising from the performance of said acts and duties:

1. ~~Retract a patient's cheek, tongue, or other parts of tissues during a dental operation; assist with the placement or removal of a rubber dam and accessories used for its placement and retention, as directed by an operating dentist during the course of a dental operation; remove such debris as is normally created and accumulated during or after dental procedures by the dentist by use of vacuum devices, compressed air, mouthwashes, and water; provide any assistance, including the placement of material in a patient's oral cavity in response to a specific direction to do so by a licensed dentist who is then actually engaged in performing a dental operation and who is then actually in a position to give direct supervision to the rendition of such assistance:~~

1. Place dental material into a patient's mouth in response to a specific direction by a licensed dentist;
2. Cleanse the supragingival surface of the tooth in preparation for:
 - a. The placement of bands, crowns, and restorations;
 - b. Rubber dam application;
 - c. Acid etch procedures;
 - d. Removal of dressings and packs;
3. Remove excess cement from inlays, crowns, bridges, and orthodontic appliances with hand instruments;
4. Remove temporary cement, interim restorations, and periodontal dressings with hand instruments;
5. Remove sutures;
6. Place and remove rubber dams and matrix bands;
7. Fabricate and place interim restorations with temporary cement.

- B. A dental assistant may ~~do and~~ perform the following acts and duties procedures and functions under the personal general supervision of a licensed dentist and the direct supervision and control of a licensed dental hygienist. The licensed dentist shall be personally and professionally responsible and liable for any and all consequences or results from the performance of said acts and duties:

1. ~~Retract the patient's cheek, tongue, or other parts of tissues during a dental operation; remove such debris as is normally created and accumulated during the course of treatment being rendered by a licensed dental hygienist during or after operative procedures by the hygienist by the use of vacuum devices, compressed air, mouth-~~

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washes, and water, provide any assistance to a licensed dental hygienist who is then and there actually in a position to give direct supervision to the rendition of such assistance:

1. Apply topical fluorides;
2. Train or instruct patients in techniques of oral hygiene, preventive procedures, dietary counseling for caries and plaque control, and provide pre- and post-operative instructions relative to specific office treatment;
3. Collect and record information pertaining to extraoral information;
4. Collect and record information pertaining to existing intraoral conditions.

C. Under personal supervision the dental assistant may:

1. With proper instruction from a dentist or hygienist, train or instruct patients in techniques of oral hygiene, preventive procedures, dietary counseling for caries and plaque control, and pre- and post-operative instructions relative to specific office treatments that have been or are to be performed;
2. Apply fluorides under the personal supervision and direction of a dentist or dental hygienist. A dental assistant may not perform any of the prophylaxis procedures.

C. A dental assistant may apply sealants under the direct supervision of a licensed dentist or a licensed dental hygienist.

D. A dental assistant may perform the following procedures and functions under the direct supervision of a licensed dentist or a licensed dental hygienist certified pursuant to A.R.S. §§ 32-1281(B)(5) and 32-1281(F)(2):

1. Prepare patient for administration of nitrous oxide and oxygen analgesia upon the direct instruction and presence of the dentist or dental hygienist;
2. Observe patient during nitrous oxide and oxygen analgesia by the dentist or dental hygienist.

R4-11-503. Radiographic duties

~~A dental assistant may expose radiographs for dental diagnostic~~

~~purposes, only under the personal supervision of the dentist and after completing a course in radiography or passing a challenge exam approved by the state of Arizona State Board of Dental Examiners. Enforcement shall commence one year from adoption.~~

R4-11-504. Limitations on Duties of Dental Assistants

~~A dental assistant assistants are is expressly prohibited from performing the following duties:~~

1. ~~Performance of duties of dental hygienists except that the assistant may remove excess cement from inlays, crowns, bridges, and orthodontic appliances;~~

1. Any procedure which by law only licensed dentists, licensed dental hygienists, or certified denturists can perform;

2. The administration of nitrous oxide and oxygen analgesia without the dentist present in the operator;

a. Administration as used in this context shall mean the initial introduction of nitrous oxide and oxygen to the patient to an established safe plane of analgesia. Remaining procedures shall be conducted under personal supervision.

3. Placement, adjustment, or intraoral carving carvings of dental restorations or prostheses;

4. Final jaw registrations;

5. Taking final impressions for any activating orthodontic appliance, permanent or fixed or removable prosthesis or tooth restoration;

6. Activation of orthodontic appliances;

6. Any irreversible procedure.

7. Adjusting any orthodontic activating appliance or fixed or removable prosthesis;

8. The performance of any procedure considered irreversible. The Board of Dental Examiners shall be the sole determiner of what constitutes an irreversible procedure based upon generally accepted definitions currently in effect.

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

**CHAPTER 1. DEPARTMENT OF HEALTH SERVICES
ADMINISTRATION**

PREAMBLE

1. Sections Affected

R9-1-412

Rulemaking Action

Amend

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 36-136(F)

Implementing statute: A.R.S. § 36-405(A)

3. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Tom Thliveris
Address: Health and Child Care Review Services
1647 East Morten, Suite 180
Phoenix, Arizona 85020

Telephone: (602) 255-1144
Fax: (602) 255-1109

or Name: Arlene Good Thunder
Address: Department of Health Services
Assurance and Licensure Services
1651 East Morten, Suite 110
Phoenix, Arizona 85020

Telephone: (602) 255-1197
Fax: (602) 255-1135

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4. An explanation of the rule, including the agency's reasons for initiating the rule:

R9-1-412 lists the physical plant health and safety codes and standards that the Department uses when reviewing physical plant requirements of health care institutions or child care facilities that are seeking licensure by the Department. Food service or food establishments are also required to comply, in part, with the physical plant health and safety codes and standards referenced in R9-1-412. The Department refers to the codes and standards referenced throughout Title 9. The Department is proposing to update the referenced codes and standards in R9-1-412 that have been reissued with a new date.

5. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

6. The preliminary summary of the economic, small business, and consumer impact:

The Director's responsibility is to establish minimum standards and requirements for the construction, modification, and licensure for health care institutions that are necessary to ensure the public health, safety, and welfare. R9-1-412 incorporates by reference codes and standards used in physical plant construction and modifications of behavioral health residential facilities and institutions, and health care facilities such as child day care centers, food handling establishments, ice manufacturing plants, environmental and clinical testing laboratories, and detoxification centers. R9-1-412 is being amended to update codes and standards in compliance with construction methods used by the industry and in line with local governmental ordinances or codes.

With the adoption of the proposed rule amendment, the cost to the Department of Health Services for enforcement, to include building construction and modification audits and licensing efforts, will not increase since existing staff are in place and budgeted to carry out provisions of the proposed rule amendment. Minimal costs of under \$1,000 will be incurred to write, review, and publish the proposed rules. An additional cost of \$5,000 would be to purchase the updated codes and standards to be incorporated by reference. Private entities, which include architect and engineering services, would incur similar costs in purchasing updated codes and standards as an ongoing and routine expense for their services.

The economic impact of this rule is indeterminable as it is not possible for the Department to analyze the revised codes and standards impact on the construction, health, and safety aspects of the regulated facilities. Considerations would be whether the updated codes and standards were more or less restrictive, whether the costs were passed on, absorbed, or reduced to health providers or consumers and whether a health provider would increase or decrease the costs of services to the individual or taxpayer as a result of the proposed changes to the rule. The previous update of the codes and standards indicated a reduction in costs because the codes and standards were less restrictive. However, data is not available which establishes whether the perceived savings materialized or were passed on to the consumer nor is data available regarding the impact the revised codes and standards proposed in this rule will have on costs to the industry, providers, and consumers. The costs will vary as a result of implementation of these updated codes and standards and depend upon the degree of difference from the superseded code as well as type of facility affected. It is anticipated that the new and alternative technologies included in the new codes as well as the trend toward more flexibility in the new codes are likely to bring cost savings while maintaining or further promoting public health and safety. The regulated industry, for which these standards and codes apply, are supportive of the changes and have urged the speedy adoption of the rule as amended.

7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name:	Tom Thliveris	or	Name:	Arlene Good Thunder
Address:	Health and Child Care Review Services 1647 East Morten, Suite 180 Phoenix, Arizona 85020		Address:	Department of Health Services Assurance and Licensure Services 1651 East Morten, Suite 110 Phoenix, Arizona 85020
Telephone:	(602) 255-1144		Telephone:	(602) 255-1197
Fax:	(602) 255-1109		Fax:	(602) 255-1135

8. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

The Department has not scheduled any oral proceedings. Pursuant to A.R.S. § 41-1023(C), the Department will schedule oral proceedings if 5 or more people file written requests for oral proceedings within 30 days after this published notice of proposed rule adoption. Written comments will be accepted through 5 p.m., February 5, 1996, the close of record date. Any comments on the proposed rule or request for an oral proceeding may be sent to Arlene Good Thunder at the address listed above.

9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class or rules:

None.

10. Incorporations by reference and their locations in the rules:

Uniform Building Code, 1994 edition, incorporated at R9-1-412(A)(1)
Life Safety Code, 1994 edition, incorporated at R9-1-412(A)(2)
Uniform Mechanical Code, 1994 edition, incorporated at R9-1-412(A)(3)
Uniform Plumbing Code, 1994 edition, incorporated at R9-1-412(A)(4)
National Electric Code - 1994 edition, incorporated at R9-1-412(A)(5)
Guidelines for Construction and Equipment of Hospital and Medical Facilities, 1992-93 edition, incorporated at R9-1-412(A)(6)
National Fire Codes and Supplement, 1995, incorporated at R9-1-412(A)(7)
American National Standard for Buildings and Facilities Providing Accessibility and Usability for Physically Handicapped Peo-

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ple, ANSI A117.1, 1992 edition, incorporated at R9-1-412(A)(8)
Uniform Fire Code, 1994 edition, incorporated at R9-1-412(A)(9)

11. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 1. DEPARTMENT OF HEALTH SERVICES
ADMINISTRATION**

ARTICLE 4. CODES AND STANDARDS REFERENCED

Section

R9-1-412. Physical Plant Health and Safety Codes and Standards

ARTICLE 4. CODES AND STANDARDS REFERENCED

R9-1-412. Physical Plant Health and Safety Codes and Standards

A. When this Section is referenced in a rule contained in 9 A.A.C., then following physical plant health and safety codes and standards, incorporated by reference and on file with the Department and the Office of the Secretary of State, and no future amendments or editions shall apply:

~~A-1.~~ Uniform Building Code - ~~1991~~ 1994 edition; published by the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601-2258. (Formerly R9-1-412(A))

~~B-2.~~ Life Safety Code - ~~1991~~ 1994 edition; NFPA 101; published by the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269-9101. (Formerly R9-1-412(B))

~~C-3.~~ Uniform Mechanical Code - ~~1991~~ 1994 edition; published by the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 91789-2825. (Formerly R9-1-412(C))

~~D-4.~~ Uniform Plumbing Code - ~~1991~~ 1994 edition; published by the International Association of Plumbing and Mechanical Officials, 20001 South Walnut Drive, Walnut, California 91789-2825 (Formerly R9-1-412(D))

~~E-5.~~ National Electric Code - 1993 edition; NFPA 70; published by the National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts 02269-9101. (Formerly R9-1-412(E))

~~F-6.~~ Guidelines for Construction and Equipment of Hospital and Medical Facilities, ~~1987~~ 1992-93 Edition edition; published by the American Institute of Architects Press, 1735 New York Avenue, NW, Washington, DC 20006. (Formerly R9-1-412(F))

~~G-7.~~ National Fire Codes - ~~1992~~ 1995, Supplement published in 1995, Volumes 1 through 11; published by the National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts 02269-9101. (Formerly R9-1-412(G))

~~H-8.~~ American National Standard for Buildings and Facilities Providing Accessibility and Usability for Physically Handicapped People, ANSI A117.1 - ~~1986~~ 1992 edition; published by American National Standards Institute, 11 West 42nd Street, New York, New York 10036. (Formerly R9-1-412(H))

~~I-9.~~ Uniform Fire Code - ~~1991~~ 1994 Edition edition; published by the International Fire Code Institute, 5360 South Workman Mill Road, Whittier, California 90601-2258 under the joint sponsorship of the International Conference of Building Officials, Western Fire Chiefs Association, and International Association of Fire Chiefs. (Formerly R9-1-412(I))

~~J.~~ Uniform Building Code Standards 1991 Edition, published by the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601-2258.

~~K.~~ The above listed codes and standards are incorporated by reference and are on file with the Office of the Secretary of State.

B. A person shall not be subject to any penalty or fee specified in the physical plant health and safety codes and standards that are incorporated by reference in this Section.

NOTICE OF PROPOSED RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

**CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY
WASTE MANAGEMENT**

PREAMBLE

1. Sections Affected

R18-8-260
R18-8-261
R18-8-262
R18-8-263
R18-8-264
R18-8-265
R18-8-266
R18-8-268
R18-8-270
R18-8-271
R18-8-273

Rulemaking Action

Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend
New Section

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2. **The specific authority for the rule making, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 49-922
Implementing statute: A.R.S. § 49-922

3. **The name and address of agency personnel with whom persons may communicate regarding the rule:**

Name: Lynn A. Keeling, Rules Specialist
Address: Department of Environmental Quality
3033 North Central Avenue, Room 844A
Phoenix, Arizona 85012

Telephone: (602) 207-2223
Fax: (602) 207-2251

or secondary contact:

Name: Martha Seaman, Manager, Rule Development Section
Address: Department of Environmental Quality
3033 North Central Avenue, Room 831
Phoenix, Arizona 85012

Telephone: (602) 207-2222
Fax: (602) 207-2251

4. **An explanation of the rule, including the agency's reasons for initiating the rule:**

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- A. General Information about the Incorporations by Reference as of July 1, 1995.
- B. Descriptions of the revisions incorporated by reference.
- C. Summary of the Incorporation by Reference.
- D. Summary of state specific changes.

A. General Information about the Incorporations by Reference as of July 1, 1995.

Every year the Arizona Department of Environmental Quality (ADEQ) proposes amendments to the state's hazardous waste rules. The state's hazardous waste rules are generally comprised of the federal regulations, authorized by Subtitle C of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), which are incorporated by reference. The hazardous waste rules are well established and have been effective since 1984. This year's amendments cover changes in the federal regulations promulgated between July 2, 1994, and July 1, 1995.

To be authorized to manage the federal hazardous waste program, Arizona must either incorporate by reference the federal regulations or write state rules that are equivalent to and consistent with federal regulations. Incorporating the federal regulations will keep Arizona's hazardous waste management program funded by the United States Environmental Protection Agency (EPA) and in compliance with A.R.S. § 49-922. The EPA requires that Arizona be reauthorized to maintain the authority to manage the federal hazardous waste program in lieu of the EPA administering the program in Arizona. ADEQ received final RCRA authorization in 1985 and continues to apply for reauthorization to keep current with changes to federal regulations. Adoption of federal regulations also promotes compliance uniformity among states. Most of the federal regulations incorporated by reference in this rulemaking are required for reauthorization.

The adoption of the following amendments to the federal regulations is optional, but these amendments are considered to be improvements to the hazardous waste program and, therefore, are proposed to be incorporated:

- 1. The exclusion from the RCRA regulatory definition of solid waste certain in-process recycled secondary materials utilized by the petroleum industry.
- 2. The standards for the management of the universal wastes.
- 3. The definition of solid waste found in the final rule promulgated September 19, 1994. This definition reduces the scope of the federal program by broadening the closed loop recycling exclusion.

The following change is specific to Arizona and is proposed by ADEQ:

Clarification of R18-8-270 to expressly state that the processing of an application for a partial or final closure plan includes the review and evaluation of the closure report.

To identify the changes from the incorporations by reference, the incorporation date in the rule is changed from July 1, 1994, to July 1, 1995, in subsection (A) of most Sections. Subsection (A) of Sections R18-8-260 through R18-8-266, R18-8-268, R18-8-270, and R18-8-71 proposes to incorporate by reference the federal regulations published in 40 CFR 260 through 266, 268, 270, and 124 as of July 1, 1995, with certain exceptions. Proposed Section 273 is a new Section which is the Standards for Universal Waste Management. Sections R18-8-269 and R18-8-280 are state rules that do not incorporate federal regulations. 40 CFR 260 through 280, as of July 1, 1995, has not been published in its integrated

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form as of submittal of this proposed rule; therefore, the Federal Registers are noted for reference to each rule incorporated by reference.

The purpose of this rulemaking is primarily to incorporate the text of federal regulations for reauthorization by the EPA. Modifications to the text incorporated by reference are intended to make the language consistent with state terminology, not to make substantive changes to the content. For example, the federal regulations refer to the "EPA" because it is the agency responsible for implementation and enforcement of the regulations. However, since Arizona is authorized to implement and enforce the federal regulations, "EPA" is usually replaced with "ADEQ" when referring to the agency that implements the regulations. Because the changes to the federal regulations are generally to tailor the language to ADEQ, the changes to the incorporated text are not intended to have any additional impact beyond the federal regulation.

B. Descriptions of the revisions incorporated by reference.

1. Rule Title: *Identification and Listing of Hazardous Waste; Amendments to Definition of Solid Waste*. The EPA is excluding from the RCRA regulatory definition of solid waste certain in-process recycled secondary materials utilized by the petroleum refining industry. Specifically, the rule states that oil recovered from petroleum refinery wastewaters and from other sources, both on-site and off-site, is excluded from the regulatory definition of solid waste if it is subsequently inserted (along with normal process streams) into the petroleum refining process prior to crude distillation or catalytic cracking. This rule can be found in 59 Fed. Reg. 38536, dated July 28, 1994, and is a deregulatory action.

2. Rule Title: *Standards for Management of Specific Hazardous Wastes; Amendment to Subpart C--Recyclable Materials Used in a Manner Constituting Disposal*. The EPA is amending 40 CFR 266.20, which contains provisions for conditionally exempting from Subtitle C regulations some hazardous waste-derived products used in a manner constituting disposal (i.e., applied to or placed on land). The amendment provides that slag residues produced from the high temperature metal recovery (HTMR) treatment of electric arc furnace dust (K061), steel finishing pickle liquor (K062), and electroplating sludges (F006) are not exempt from RCRA Subtitle C regulations.

This action will effectively prohibit anti-skid or deicing uses of HTMR slag derived from K061, K062, and F006 as waste-derived products placed on the land, unless there is compliance with all Subtitle C standards applicable to land disposal. This rule does not prohibit other uses of these slag residues that meet § 266.20(b) requirements. The amended rule also does not prevent the disposal of HTMR slag in a Subtitle D unit if the residuals can meet the risk-based exclusion levels specified in § 261.3(c)(2). This rule can be found in 59 Fed. Reg. 43496, dated August 24, 1994.

3. Rule Title: *Testing and Monitoring Activities, Land Disposal Restrictions Corrections*. The EPA corrected the final regulations which were published Tuesday, August 31, 1993 ("Hazardous Waste Management System; Testing and Monitoring Activities; Final Rule", 58 FR 46040) by this rule. This corrects the unintended removal of text from 40 CFR 268.7(a), which set out the generator waste analysis and recordkeeping requirements of the Land Disposal Restrictions (LDR). This rule can be found in 59 Fed. Reg. 47980, dated September 19, 1994.

4. Rule Title: *Land Disposal Restrictions Phase II--Universal Treatment Standards, and Treatment Standards for Organic Toxicity Characteristic Wastes and Newly Listed Wastes*. As part of the LDR program, EPA is promulgating treatment standards for the newly identified organic toxicity characteristic (TC) wastes (except those managed in Clean Water Act (CWA) systems, CWA- equivalent systems, or Class I Safe Drinking Water Act (SDWA) injection wells), and for all newly listed coke by-product and chlorotoluene production wastes. The required treatment standards for these wastes must be met before they are land disposed. EPA is also requiring ignitable characteristic wastes with a high total organic carbon (TOC) content and toxic characteristic pesticide wastes, that are being disposed of in Class I nonhazardous waste injection wells, to either be injected into a well that is subject to a no-migration determination, or be treated by the designated LDR treatment method.

EPA is also making a major modification to the LDR program in order to simplify and provide consistency in the requirements. EPA is establishing a single set of requirements, referred to as universal treatment standards, that apply to most hazardous wastes. EPA is also simplifying the LDR program by reducing paperwork for the regulated community and improving guidance to make compliance easier. EPA is publishing clarifying guidance regarding treatability variances, which largely restates previous Agency statements. Finally, EPA is modifying the hazardous waste recycling regulations which will allow streamlined regulatory decisions to be made regarding the regulation of certain types of recycling activities. The definition of "solid waste" has been changed to broaden the closed loop recycling exclusion and, therefore, the definition is less stringent. ADEQ has the option to adopt less stringent federal regulations for the RCRA program. ADEQ supports recycling and believes the broadened exclusion is still protective of human health and the environment; therefore the new definition is included in this rulemaking. This rule can be found in 59 Fed. Reg. 47982, dated September 19, 1994.

5. Rule Title: *Hazardous Waste Treatment, Storage, and Disposal Facilities and Hazardous Waste Generators; Organic Air Emissions Standards for Tanks, Surface Impoundments and Containers*. EPA is promulgating air standards that will further reduce organic emissions from hazardous waste management activities. The air standards apply to owners and operators of TSDFs subject to RCRA Subtitle C permitting requirements and to certain hazardous waste generators accumulating waste on-site in RCRA permit-exempt tanks and containers. Under these standards, air emission controls must be used for tanks, surface impoundments, and containers in which hazardous

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waste is placed on or after June 5, 1995, except under certain conditions specified in the rule. Air emission control requirements are also added to the RCRA permit terms and provisions specified for TSDF miscellaneous units. In addition, this action establishes a new EPA reference test method (Method 25E) to determine the organic vapor pressure of a waste. This rule can be found in 59 Fed. Reg. 62896, dated December 6, 1994.

6. Rule Title: *Land Disposal Restrictions Phase II--Universal Treatment Standards, and Treatment Standards for Organic Toxicity Characteristic Wastes and Newly Listed Wastes*. This rule corrects errors and clarifies the language in the preamble and regulation of the September 19, 1994, final rule. The rule is a congressionally mandated prohibition on land disposal of certain hazardous wastes. The incorporation by reference places the regulation into Arizona's rules and poses no new requirements. This rule can be found in 60 Fed. Reg. 242, dated January 3, 1995.
7. Rule Title: *Hazardous Waste Management System; Testing and Monitoring Activities*. EPA is amending Subtitle C of RCRA for testing and monitoring activities. This amendment adds new and revised methods as Update II to the Third Edition of the EPA-approved test methods manual "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846. It also incorporates the SW-846 Third Edition, as amended by Updates I (promulgated August 31, 1993), II, and IIA (promulgated January 4, 1994, as part of the wood surface protection rule), into 40 CFR 260.11(a) for use in complying with the requirements of Subtitle C of RCRA. The intent of this amendment is to provide better and more complete analytical technologies for RCRA-related testing and thus promote cost effectiveness and flexibility in choosing analytical test methods. This rule can be found in 60 Fed. Reg. 3089, dated January 13, 1995.
8. Rule Title: *Hazardous Waste Management System; Carbamate Production Identification and Listing of Hazardous Waste; and CERCLA Hazardous Substances Designation and Reportable Quantities*. EPA is amending RCRA to reduce hazards to human health and the environment from the ongoing manufacture of carbamate chemicals, which are formulated for use as pesticides and in the production of synthetic rubber. EPA is listing as hazardous 6 wastes generated during the production of carbamate chemicals. EPA is providing an exemption from the definition of hazardous waste for certain wastes, if the generator demonstrates that hazardous air pollutants are not being discharged or volatilized during waste treatment. EPA is also exempting from the definition of "hazardous waste" biological treatment sludges generated from the treatment of certain wastes provided the sludges do not display any of the characteristics of a hazardous waste as defined in R18-8-261. EPA is also adding 58 specific chemicals to the list of commercial chemical products that are hazardous wastes when discarded and to the list of hazardous constituents upon which listing determinations are based.

This action is taken under the authority of Sections 3001(e)(2) and 3001(b)(1) of HSWA which direct EPA to make a hazardous waste listing determination for carbamate wastes. The effect of listing these wastes will be to subject them to regulation as hazardous wastes under subtitle C of RCRA and the notification requirements of Section 103 under CERCLA. EPA is not taking action at this time to adjust the 1-pound statutory reportable quantities for these substances. This rule can be found in 60 Fed. Reg. 7824, dated February 9, 1995.
9. Rule Title: *Hazardous Waste Management System; Testing and Monitoring Activities*. EPA is amending RCRA testing and monitoring activities. This amendment clarifies the temperature requirement for pH measurements of highly alkaline wastes and adds Method 9040B (pH Electrometric Measurement) and Method 9045C (Soil and Waste pH) to "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846. This amendment will provide a better and more complete analytical technology for RCRA testing in support of hazardous waste identification under the corrosivity characteristic (40 CFR 261.22, see R18-8-261). This rule can be found in 60 Fed. Reg. 17001, dated April 4, 1995.
10. Rule Title: *Hazardous Waste Management System; Carbamate Production Identification and Listing of Hazardous Waste; and CERCLA Hazardous Substance Designation and Reportable Quantities*. EPA is correcting minor errors by this amendment to the final rule February 9, 1995, regulations (60 FR 7824) which regulates the manufacture of carbamate chemicals. This rule can be found in 60 Fed. Reg. 19165, dated April 17, 1995.
11. Rule Title: *Universal Waste Rule (Hazardous Waste Management System; Modification of the Hazardous Waste Recycling Regulatory Program)*. The EPA has new, streamlined hazardous waste management regulations governing the collection and management of certain widely generated hazardous wastes (hazardous waste batteries, hazardous waste pesticides that are either recalled or collected in waste pesticide collection programs, and mercury-containing thermostats), known as universal wastes.

By reducing certain current RCRA Subtitle C regulatory requirements, this rule will encourage state and local governments and manufacturers to establish environmentally-sound collection programs, and retailers to participate in them. Although households and small businesses produce much of these wastes, retailers have been reluctant to accept them because of concerns that some of the wastes might be from regulated hazardous waste generators. If that were the case, all of the collected wastes would be subject to full RCRA Subtitle C regulation.

In contrast, under the streamlined system, retailers and others who collect and handle these wastes would not have to comply with burdensome RCRA Subtitle C paperwork requirements and certain technical standards. Despite this regulatory reduction, however, this rule is actually expected to increase environmental protection by increasing the availability of collection and recycling programs that will ensure that these wastes go to hazardous waste recycling and disposal facilities rather than to less regulated municipal solid waste landfills and incinerators.

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This rule will also serve as a model for adding other similar wastes in the future by allowing a petition process. When states adopt the rule, they can also pick up the petition process. In this rule package, Arizona is picking up the petition process. Adopting the petition process, as part of the universal waste rule, enhances ADEQ's flexibility by allowing ADEQ to add wastes to its universal waste program without requiring the wastes to be added at the federal level. This rule can be found in 60 Fed. Reg. 25492, dated May 11, 1995, and is a deregulatory action.

12. Rule Title: *Hazardous Waste Treatment, Storage, and Disposal Facilities and Hazardous Waste Generators; Organic Air Emission Standards for Tank, Surface Impoundments, and Containers*. EPA has postponed the effective date for the December 6, 1994, rule on organic air emission standards for tanks, surface impoundments, and containers. The EPA plans to publish a subsequent Federal Register document to clarify provisions of the regulation. To ensure all options are clear to affected facilities, and to ensure that all affected facilities have time to make alterations in their compliance plan, the effective date of the rule is postponed. This rule can be found in 60 Fed. Reg. 26828, dated May 19, 1995.

C. Summary of the incorporation by references.

The rules incorporated by reference are required for reauthorization except for the following:

1. The exclusion of certain in-process recycled secondary materials utilized by the petroleum refining industry. (B1)
2. The definition of solid waste. (B4)
3. The standards for universal waste management. (B11)

These optional federal regulations are proposed to be incorporated because they promote the efficient and effective management of the hazardous waste program in Arizona.

D. Summary of state-specific change.

ADEQ is proposing changes to R18-8-270(G)(3)(c) and R18-8-270(G)(4) regarding fees for approval of facility/site closure plans. This rule clarifies that the review and approval of the closure reports are a part of the application process for the closure plans. ADEQ believes the existing rule implies that this is included, but to preclude any misunderstanding by the applicant, the clarifying language is added. Currently, ADEQ reviews a "closure plan" which is used to direct the facility in the process of "how to" properly close; then, after closure is completed, ADEQ reviews the "closure report" which states "how" the closure was performed. The closure report is very important to ensure all closure activities were performed properly.

A.R.S. § 49-922(B)(5) requires the Director to establish and collect a reasonable fee from the applicant to cover the cost of administrative services and other expenses associated with evaluating an application and issuing or denying a permit. A person who obtains a hazardous waste permit will at some point have to apply for closure. To perform partial or full closure, a closure plan must be reviewed and approved by ADEQ. To ensure that the actions outlined in the closure plan have been performed properly, ADEQ must scrutinize the closure report in detail. Therefore, it should be inferred that review of the closure report is included as a part of a partial or full facility or site closure. This action does not change the scope of the rule; it merely clarifies an imprecise area in the current rule.

This Register contains 2 rules that affect the hazardous waste rules found in R18-8-260 et seq. The final rule incorporates 40 CFR 260 through 266, 268, 270, and 271, as of July 1, 1994. The final rule became effective December 7, 1995. The proposed rulemaking incorporates 40 CFR 260 through 266, 268, 270, and 271, as of July 1, 1995. The proposed rulemaking also includes the new 40 CFR 273, Management of Universal Wastes. The proposed rule will not be effective until it is filed with the Secretary of State's Office, after public comment and approval by the Governor's Regulatory Review Council.

5. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

6. The preliminary summary of the economic, small business, and consumer impact:

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Waste Management

Article 2: Hazardous Wastes

The benefit of this rulemaking is that ADEQ will be reauthorized to implement the federal hazardous waste program and receive federal funding of about \$2 million per year for its effort. In order for ADEQ to maintain implementation authority, EPA must reauthorize Arizona's program on a regular basis.

This rule package has 3 categories of changes. The 1st category is the required federal regulations; the 2nd category contains optional federal regulations; and the 3rd category is an ADEQ-initiated change specific to Arizona. The 3 categories have distinctive probable costs.

The incorporation of the required federal regulations does not pose an incremental economic impact to Arizona because the EPA will enforce the federal regulations if Arizona does not.

The 2nd category consists of the following changes:

The petroleum refinery exemption.

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The definition of solid waste.

The standards for management of universal wastes.

Businesses are very interested in Arizona adopting these rules, because they provide some regulatory relief. ADEQ believes these rules protect public health and the environment while offering less costly requirements for business. Therefore, ADEQ is exercising its option to include these rules in this rulemaking. The cost of these rules are evaluated separately.

The 1st optional regulation incorporated by reference excludes from the RCRA regulatory definition of solid waste certain in-process recycled secondary materials utilized by the petroleum refining industry. Specifically, the rule states that oil recovered from petroleum refinery wastewaters and from other sources, both on-site and off-site, is excluded from the regulatory definition of solid waste if it is subsequently inserted (along with normal process streams) into the petroleum refining process prior to crude distillation or catalytic cracking. The impact of this rule on businesses of any size that perform petroleum refining is that the recycled secondary materials do not need to be regulated as a solid waste. This enables the business to reuse a waste without requirements for disposal or treatment.

This incorporated federal regulation is expected to bring some savings to the two refineries operating in Arizona. ADEQ supports less regulation when there is no anticipated adverse affect on the public health and the environment. ADEQ is interested in comments on this rule.

The 2nd optional regulation incorporated by reference is known as the standards for management of universal wastes. This rule streamlines hazardous waste management regulations for certain widely generated wastes identified as universal wastes. This rule allows hazardous waste batteries, certain hazardous waste pesticides, and mercury-containing thermostats to be exempt from the recordkeeping and reporting required for hazardous wastes. The current RCRA regulations have been a major impediment to national collection for these wastes by making reporting, recording, and accumulation cumbersome. Retail stores have indicated a desire to assist with the collection, but the regulatory burden currently in place requires reporting, accumulation limits, manifesting, and assignment of an EPA identification number. If the quantity of universal waste exceeds certain limits, then there are reporting requirements. The only limitation placed upon the transporters is that the entity cannot treat, dilute, or dispose of the waste. Due to the reduction in reporting, the expansion of the storage time frames, this rule results in a savings to any collector, handler, or transporter of a universal waste.

Either EPA or ADEQ may add wastes to the definition of universal waste in the future. A petition process which triggers a rule-making is included through which additional wastes could be added to the universal waste regulations. This is most beneficial for businesses who handle wastes similar to batteries, mercury-contained thermostats, and the universal waste pesticides. It is anticipated that ADEQ will be petitioned to include fluorescent light bulbs as a universal waste. ADEQ estimates that the cost in staff and time to process the petition by ADEQ will be minimal.

The remaining cost to analyze is savings to business weighed against the potential health impact to the public. Despite this regulatory reduction, the rule is expected to increase environmental protection by increasing the availability of collection and recycling facilities thus providing an alternative to many generators currently disposing of the wastes in municipal solid waste landfills and incinerators. The standards for the management of universal wastes are not anticipated to impose any new costs or be a greater risk to human health and the environment.

The 3rd optional incorporation of a federal regulation is the change to the definition of solid waste. The definition of "solid waste" has been changed to broaden the closed-loop recycling exclusion, making the definition less stringent. ADEQ believes this change will properly protect human health and the environment and will not impose an additional enforcement cost on ADEQ. This change excludes from the solid waste definition the residues of a secondary process of "closed-loop" recycling, if the residues are reinserted into the process. The modification is based upon EPA discretion to consider the manner in which a secondary material is managed in determining RCRA jurisdiction. The EPA considered whether the material was part of the waste management problem and the potential for the waste to pose a hazard to human health and the environment when recycled. This broadened definition is intended to reduce the cost of managing waste while increasing efficiency. ADEQ does not expect any incremental costs from this rule.

The 3rd category of change in this rule package is a state-initiated change which affects the recovery of administrative costs associated with permit-related activities. An application for a closure permit has 2 elements: 1) review and approval of the closure plan and 2) review and approval of the closure report. The closure plan includes tasks that ensure that a hazardous waste facility or site is not left in a condition that would endanger human health or the environment and is prepared prior to closure of the facility or site. The closure report is verification that the closure plan was properly performed. While A.R.S. § 49-922(B)(5) mandates the Director to collect reasonable fees for these types of services, R18-8-270(G)(3) and (4) do not clearly state what the fee for processing the closure permit includes. The change to the rule expressly states that the fee for processing a closure permit includes both the review and approval of the closure plan and the closure report.

A closure report generally takes 40 hours to review and approve, if there is no remediation. The 40 hours includes meetings, site visits, notices of deficiencies, and confirmatory sampling. ADEQ has developed an estimate of the number of closure reports expected to be reviewed and approved during the next 3 years. Some storage facilities plan to close a portion of the facility (partial closure) such as their storage tank. ADEQ anticipates 12 closures in 1996, 5 closures in 1997, and 4 closures in 1998. The current cost per hour for this administrative review and approval is \$48. This results in a cost of approximately \$2,000 per closure for review and approval of the closure report. Each closure plan (excluding the closure report) is currently costing the applicant about \$2,500. Therefore, when this proposed rule is in effect, the cost of the closure permit will include review and approval of both the plan and the report totalling approximately \$4,500. Entities expected to be affected by the review are facilities like Motorola, Laidlaw, Tally Industries, Unidynamics, and Fort Huachuca. As a result of this rule, ADEQ will recover approximately \$24,000 in

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1996, \$10,000 in 1997, and \$8,000 in 1998. The benefit of the review of the closure report is confirmation (an enforcement tool) that the closure plan was followed, that no releases occurred, and, therefore, that the public and the environment are protected.

The fees from this rule will generate additional revenues. ADEQ does not need additional personnel resources to perform review of the closure report. ADEQ is currently reviewing the closure report without charging the closed facility or site, causing other funds (federal grant, state general fund) which support the state's hazardous waste program to subsidize the closure report review. There have been an average of 3 closures between 1975 and 1995. It is anticipated that the 3 closures per 20 years will continue to be the average between 1995 and 2015. When passing the cost of \$24,000 to the consumers, it is doubtful the consumer will even notice an increase in the products or services from the businesses as a result of the cost to the facility for ADEQ to review the closure report. There is no special adjustment for small business because the size of the business may not correspond to the magnitude of effort for closure. A safe, release-free closure must be performed regardless of the type of business, its revenues, or the number of employees.

This modification will shift the cost of review of the closure report from all taxpayers to the customers of the companies performing the closure. ADEQ believes that the benefits of the cost recovery (to ADEQ) for review and approval of the closure report outweigh the cost imposed on the regulated community by this rule change. ADEQ is interested in any comments on this rule.

7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Lynn A. Keeling, Rules Specialist

Address: Department of Environmental Quality
3033 North Central Avenue, Room 844A
Phoenix, Arizona 85012

Telephone: (602) 207-2223

Fax: (602) 207-2251

8. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Written comments must be received by 5 p.m., Friday, February 9, 1996. Comments may be written or presented orally. Oral proceedings to consider comments on the proposed rules are scheduled for the following date and location. ADEQ is committed to complying with the Americans with Disabilities Act. If an individual with a disability needs special accommodations, please contact the person listed below, at least 72 hours before the hearing.

Date: February 6, 1996

Time: 9 a.m.

Location: Conference Room #117B
Department of Environmental Quality
3033 North Central Avenue
Phoenix, Arizona

Contact Debbie Martinez at (602) 207-4795 for special assistance.

9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific agency or to any specific rule or class of rules:

None.

10. Incorporation by reference and their location in the rules:

40 CFR 260R18-8-260
40 CFR 261R18-8-261
40 CFR 262R18-8-262
40 CFR 263R18-8-263
40 CFR 264R18-8-264
40 CFR 265R18-8-265
40 CFR 266R18-8-266
40 CFR 268R18-8-268
40 CFR 270R18-8-270
40 CFR 271R18-8-271
40 CFR 273R18-8-273

11. The full text of the rule:

TITLE 18. ENVIRONMENTAL QUALITY

**CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY
WASTE MANAGEMENT**

ARTICLE 2. HAZARDOUS WASTES

Section
R18-8-260. Hazardous Waste Management System: General

R18-8-261. Identification and Listing of Hazardous Waste
R18-8-262. Standards Applicable to Generators of Hazardous Waste

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- R18-8-263. Standards Applicable to Transporters of Hazardous Waste
R18-8-264. Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities
R18-8-265. Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities
R18-8-266. Standards for the Management of Specific Hazardous Wastes and Specific Hazardous Waste Management Facilities
R18-8-268. Land Disposal Restrictions
R18-8-270. The Hazardous Waste Permit Program
R18-8-271. Procedures for Permit Administration
R18-8-273. Standards for Universal Waste Management

ARTICLE 2. HAZARDOUS WASTES

R18-8-260. Hazardous Waste Management System: General

- A. The purpose of this Article is to establish rules and criteria for the identification, storage, treatment, transportation, and disposal of hazardous wastes which are generated, transported, treated, or disposed within the state of Arizona. Federal and state statutes and regulations cited in these rules are those adopted as of July 1, ~~1994~~ 1995, unless otherwise noted. 40 CFR 124, 260 through 266, 268, ~~and 270, and 273~~ or parts thereof are adopted by reference when so noted. Federal statutes and regulations that are cited within 40 CFR 2, 124, and 260 through 270 that are not adopted by reference may be used as guidance in interpreting federal regulatory language.
- B. Any reference or citation to 40 CFR 124, 260 through 266, 268, ~~and 270, and 273~~ or parts thereof, appearing in the body of this Article and regulations incorporated by reference, is inclusive of the new, amended, or replaced paragraphs and wording presented in this Article. When federal regulatory language that has been adopted by reference has been amended, brackets [] enclose the new language. Where appropriate, and to provide for ease of reading this Article, references to CFR section numbers and form are maintained.
- C. All of 40 CFR 260 and accompanying appendices, as amended as of July 1, ~~1994~~ 1995, (and no future editions), with the exception of §§ 260.1(b)(4) through (6), 260.20(a), 260.21, 260.22, 260.30, 260.31, 260.32, and 260.33, are incorporated by reference and modified by the following subsections of R18-8-260 and are on file with the Department of Environmental Quality (DEQ) and the Office of the Secretary of State.
- D. No change.
- E. No change.
- F. No change.
- G. §260.20(a), entitled "General" pertaining to rule making petitions, is replaced by the following:
Where the Administrator of EPA has granted a rulemaking petition pursuant to 40 CFR 260.20(a), 260.21, or 260.22, the Director may accept such a determination and amend the Arizona regulations accordingly, provided that the Director determines such action to be consistent with the policies and purposes of the HWMA
- H. §260.20(c) and (e) are amended by replacing "Federal Register" with "Arizona Administrative Register".
- I. §260.23, entitled "Petitions to amend 40 CFR 273 to include additional hazardous wastes" pertaining to rulemaking petitions, is amended as follows:
(a) Any person seeking to add a hazardous waste or a category of hazardous waste to the universal waste regulations of part 273 of this chapter may petition for a regulatory amendment under this section, 40 CFR 260.20(b) through (e), and subpart G of 40 CFR 273.
- ~~H-I.~~ No change.

R18-8-261. Identification and Listing of Hazardous Waste

- A. All of 40 CFR 261 and accompanying appendices, as amended as of July 1, ~~1994~~ 1995 (and no future editions), with the exception of § 261.5(j), are incorporated by reference and modified by the following subsections of R18-8-261, and are on file with the DEQ and the Office of the Secretary of State.
- B. No change.
- C. No change.
- D. No change.
- E. No change.
- F. No change.
- G. § 261.5, entitled "Special requirements for hazardous waste generated by conditionally exempt small quantity generators", paragraph (f)(3) is amended as follows:
(3) A conditionally exempt small quantity generator may either treat or dispose of [the] acute hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage or disposal facility, either of which is:
(i) Permitted under part 270 of this Chapter [(see R18-8-270)];
(ii) In interim status under parts 270 and 265 of this chapter [(see R18-8-270 and R18-8-265)];
(iii) Authorized to manage hazardous waste by a state with a hazardous waste management program approved under part 271 of this chapter;
(iv) Permitted, licensed, or registered by a State to manage municipal or industrial solid waste [and approved by the owner or operator of the solid waste facility to accept acute hazardous waste from conditionally exempt small quantity generators that have not been excluded from disposing of their waste at such a facility pursuant to applicable provisions of the Solid Waste Management Act, A.R.S. §§ 49-701 through 49-791]; ~~or~~
(v) A facility which:
(A) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or
(B) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation; ~~or~~
(vi) For universal waste managed under part 273 of this Chapter [(see R18-8-273)], a universal waste handler or destination facility subject to the requirements of part 273 of this Chapter.
- H. § 261.5, entitled "Special requirements for hazardous waste generated by conditionally exempt small quantity generators," subsection (g) is amended as follows:
(g) In order for hazardous waste[, other than acute hazardous waste,] generated by a conditionally exempt small quantity generator in quantities of less than 100 kilograms of hazardous waste during a calendar month to be excluded from full regulation under this [subsection], the generator must comply with the following requirements:
(1) § 262.11 [(see R18-8-262)];
(2) The conditionally exempt small quantity generator may accumulate hazardous waste on-site. If [such generator] accumulates at any time more than a total of 1000 kilograms of hazardous wastes, all of those accumulated [hazardous] wastes are subject to regulation under the special provisions of part 262 applicable to generators of between 100 kg and 1000 kg of hazardous waste in a calendar month as well as the requirements of parts 263 through 266, 268, and parts 270 and 124 of this chapter [(see R18-8-262, R18-8-263 through R18-8-266, R18-8-268, R18-8-270, and R18-8-271)] and the applicable notification requirements of section 3010 of RCRA. The time

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period of § 262.34(d) [(see R18-8-262)] for accumulation of wastes on-site begins for a conditionally exempt small quantity generator when the accumulated wastes exceed 1000 kilograms;

- (3) A conditionally exempt small quantity generator may either treat or dispose of [its] hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage or disposal facility, either of which is:

- (i) Permitted under part 270 of this chapter [(see R18-8-270)];
- (ii) In interim status under parts 270 and 265 of this chapter [(see R18-8-270 and R18-8-265)];
- (iii) Authorized to manage hazardous waste by a State with a hazardous waste management program approved under part 271 of this chapter;
- (iv) Permitted, licensed, or registered by a state to manage municipal or industrial solid waste [and approved by the owner or operator of the solid waste facility to accept hazardous waste from conditionally exempt small quantity generators who have not been excluded from disposing of their waste at such a facility pursuant to applicable provisions of the Solid Waste Management Act, A.R.S. §§ 49-701 through 49-791]; ~~or~~
- (v) A facility which:
 - (A) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or
 - (B) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation; or

(vi) For universal waste managed under part 273 of this Chapter [(see R18-8-273)] a universal waste handler or destination facility subject to requirements of part 273 of this Chapter.

- I. § 261.6, entitled "Requirements for recyclable materials," paragraphs (a)(1) through (a)(3) are amended as follows:

- (a)(1) Hazardous wastes that are recycled are subject to the requirements for generators, transporters, and storage facilities of subsections (b) and (c) of this Section, except for the materials listed in subsections (a)(2) and (a)(3) of this section. Hazardous wastes that are recycled [shall] be known as "recyclable materials."
- (2) The following recyclable materials are not subject to the requirements of this Section but are regulated under [40 CFR 266, subparts C, F, G, and H (see R18-8-266)] and all applicable provisions in parts 270 and 124 of this Chapter [(see R18-8-270 and R18-8-271)]:
 - (i) Recyclable materials used in a manner constituting disposal (subpart C);
 - (ii) Hazardous wastes burned for energy recovery in boilers and industrial furnaces that are not regulated under [40 CFR 264 or 265, subpart O (see R18-8-264 and R18-8-265)] (subpart H);
 - (iii) Recyclable materials from which precious metals are reclaimed (subpart F);
 - (iv) Spent lead-acid batteries that are being reclaimed (subpart G).
- (3) The following recyclable materials are not subject to regulation under [40 CFR 262 through 266, 268, 270, or 124 (see R18-8-262 through R18-8-266, R18-8-268, R18-8-270, and R18-8-271)] and are not subject to the notification requirements of section 3010 of RCRA:
 - (i) Industrial ethyl alcohol that is reclaimed except that, unless provided otherwise in an international agree-

ment as specified in § 262.58:

- (A) A person initiating a shipment for reclamation in a foreign country, and any intermediary arranging for the shipment, must comply with the requirements applicable to a primary exporter in §§ 262.53, 262.56 (a)(1)-(4), (6), and (b), and 262.57, export such materials only upon consent of the receiving country and in conformance with the EPA Acknowledgment of Consent as defined in subpart E of part 262, and provide a copy of the EPA Acknowledgment of Consent to the shipment to the transporter transporting the shipment for export;
 - (B) Transporters transporting a shipment for export may not accept a shipment if [the transporter] knows the shipment does not conform to the EPA Acknowledgment of Consent, [shall] ensure that a copy of the EPA Acknowledgment of Consent accompanies the shipment and [shall] ensure that [the EPA Acknowledgment of Consent] is delivered to the [subsequent transporter or] facility designated by the person initiating the shipment.
- ~~(ii) Used batteries (or used battery cells) returned to a battery manufacturer for regeneration;~~
- ~~(iii)(ii) Scrap metal;~~
- ~~(iv)(iii) Fuels produced from the refining of oil-bearing hazardous wastes along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum refining, production, and transportation practices (this exemption does not apply to fuels produced from oil recovered from oil-bearing hazardous waste, where such recovered oil is already excluded under § 261.4(a)(12) (see R18-8-261);~~
- ~~(v) Oil reclaimed from hazardous waste resulting from normal petroleum refining, production, and transportation practices, which oil is to be refined along with normal process streams at a petroleum refining facility;~~
- ~~(vi)(iv)(A) Hazardous waste fuel produced from oil-bearing hazardous wastes from petroleum refining, production, or transportation practices, or produced from oil reclaimed from such hazardous wastes, where such hazardous wastes are reintroduced into a process that does not use distillation or does not produce products from crude oil so long as the resulting fuel meets the used oil specification under [A.R.S. § 49-801(A)(5)] and so long as no other hazardous wastes are used to produce the hazardous waste fuel;~~
- (B) Hazardous waste fuel produced from oil-bearing hazardous waste from petroleum refining[,], production, and transportation practices, where such hazardous wastes are reintroduced into a refining process after a point at which contaminants are removed, so long as the fuel meets the used oil fuel specification under [A.R.S. § 49-801(A)(5)]; and
 - (C) Oil reclaimed from oil-bearing hazardous wastes from petroleum refining, production, and transportation practices, which reclaimed oil is burned as a fuel without reintroduction to a refining process, so long as the reclaimed oil meets the used oil fuel specification under

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[A.R.S. § 49-801(A)(5)]; and
(viii)(v) Petroleum coke produced from petroleum refinery hazardous wastes containing oil ~~at the same facility at which such wastes were generated by the same person who generated the waste~~, unless the resulting coke product exceeds one or more of the characteristics of hazardous waste in part 261, subpart C [(see R18-8-261)].

- J. No change.
- K. No change.
- L. No change.

R18-8-262. Standards Applicable to Generators of Hazardous Waste

- A. All of 40 CFR 262 and accompanying appendices, as amended as of July 1, ~~1994~~ 1995, (and no future editions), are incorporated by reference and modified by the following subsections of R18-8-262, and are on file with the DEQ and the Office of the Secretary of State.
- B. No change.
- C. No change.
- D. No change.
- E. No change.
- F. No change.
- G. No change.
- H. No change.
- I. No change.
- J. No change.
- K. No change.

R18-8-263. Standards Applicable to Transporters of Hazardous Waste

- A. All of 40 CFR 263, as amended as of July 1, ~~1994~~ 1995, (and no future editions), is incorporated by reference and modified by the following subsections of R18-8-263, and is on file with the DEQ and the Office of the Secretary of State.
- B. No change.
- C. No change.
- D. No change.

R18-8-264. Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

- A. All of 40 CFR 264 and accompanying appendices, as amended as of July 1, ~~1994~~ 1995, (and no future editions), with the exception of §§ 264.1(d) and (f), 264.149 - 264.150, and 264.301(i), are incorporated by reference, and modified by the following subsections of R18-8-264, and are on file with the DEQ and the Office of the Secretary of State.
- B. No change.
- C. No change.
- D. No change.
- E. No change.
- F. No change.
- G. No change.
- H. No change.
- I. No change.
- J. No change.
- K. No change.
- L. No change.
- M. No change.

R18-8-265. Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

- A. All of 40 CFR 265 and accompanying appendices, as amended as of July 1, ~~1994~~ 1995 (and no future editions), with the exception of §§ 265.1(c)(2), 265.1(c)(4), 265.149, 265.150,

and 265.430, are incorporated by reference and modified by the following subsections of R18-8-265, and are on file with the DEQ and the Office of the Secretary of State.

- B. No change.
- C. No change.
- D. No change.
- E. No change.
- F. No change.
- G. No change.
- H. No change.
- I. No change.
- J. No change.
- K. No change.

R18-8-266. Standards for the Management of Specific Hazardous Wastes and Specific Hazardous Waste Management Facilities

- A. All of 40 CFR 266, as amended as of July 1, ~~1994~~ 1995 (and no future editions), is incorporated by reference and is on file with the DEQ and the Office of the Secretary of State.
- B. § 266.100, entitled "Applicability" subsection (b) is amended as follows:
 - (b) The following hazardous wastes and facilities are not subject to regulation under this subpart:
 - (1) Used oil burned for energy recovery that is also a hazardous waste solely because it exhibits a characteristic of hazardous waste identified in subpart C of part 261 [(see R18-8-261)] of this chapter. Such used oil is subject to regulation under [A.R.S. §§ 49-801 through 49-815] rather than this subpart;
 - (2) Gas recovered from hazardous or solid waste landfills when such gas is burned for energy recovery;
 - (3) Hazardous wastes that are exempt from regulation under §§ 261.4 and 261.6(a)(3)(~~v~~)-(viii)(iv)-(v) [(see R18-8-261)] of this chapter, and hazardous wastes that are subject to the special requirements for conditionally exempt small quantity generators under § 261.5 [(see R18-8-261)] of this chapter; and
 - (4) Coke ovens, if the only hazardous waste burned is EPA Hazardous Waste No. K087, decanter tank tar sludge from coking operations.

R18-8-268. Land Disposal Restrictions

All of 40 CFR 268 and accompanying appendices, as amended as of July 1, ~~1994~~ 1995 (and no future editions), with the exception of Part 268, Subpart B, are incorporated by reference and on file with the DEQ and the Office of the Secretary of State.

R18-8-270. The Hazardous Waste Permit Program

- A. All of 40 CFR 270, as amended as of July 1, ~~1994~~ 1995 (and no future editions), with the exception of §§ 270.1(a), 270.1(c)(1)(i), 270.3, 270.10(g)(1)(i), 270.60(a) and (b), and 270.64, is incorporated by reference and modified by the following subsections of R18-8-270 and is on file with the DEQ and the Office of the Secretary of State.
- B. No change.
- C. No change.
- D. No change.
- E. No change.
- F. No change.
- G. § 270.10, entitled "General application requirements," is amended by adding the following:
 - [1. When submitting any one of the following applications, an applicant shall remit to the DEQ a permit application fee of \$10,000:
 - a. Initial Part B application submitted pursuant to §§

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- 270.10 and 270.51(a)(1) (see R18-8-270).
- b. Part B permit renewal application submitted pursuant to § 270.10(h) (see R18-8-270).
 - c. Application for a Class 3 Modification according to § 270.42 (see R18-8-270).
 - d. Application for a research, development, and demonstration permit.
2. If the reasonable cost of processing the application identified in paragraph (1) of this subsection is less than \$10,000, the difference between the reasonable cost and \$10,000 shall be refunded to the applicant. If the reasonable cost of processing the application is greater than \$10,000, the applicant shall be billed for the difference, and such difference shall be paid in full before the DEQ shall issue the permit.
3. When submitting an application for any one of the permit-related activities described in this subsection, the applicant shall remit to the DEQ \$2,500. If the reasonable cost of processing the application is greater than \$2,500, the applicant shall be billed for the difference between the fee paid and the reasonable cost of processing the application. A refund shall be paid by the DEQ if the reasonable cost is less than the \$2,500 fee, either within 45 days of a valid withdrawal of the permit application or upon permit issuance. This subsection shall apply to all the following:
- a. An application for a modification of a Part B permit pursuant to § 270.41 (see R18-8-270).
 - b. An application for a Class 2 modification of a permit submitted after permit issuance, according to § 270.42 (see R18-8-270) (see R18-8-270).
 - c. An application for approval of a final closure plan that is not submitted as part of a Part B application, including the review and approval of the closure report.
 - d. With an application for a partial closure plan for a facility, the applicant shall remit to the DEQ a fee of \$2,500 for each hazardous waste management unit involved in the partial closure plan or \$10,000, whichever is less. If the reasonable cost of processing the application, including review and approval of the closure report, is more than the initial fee paid, the applicant shall be billed for the difference, and such difference shall be paid in full before the DEQ issues at the time DEQ completes review and approval of the closure report associated with the permit. If the reasonable cost is less than the fee paid by the applicant, DEQ shall refund the difference within 45 days of the closure report review and approval associated with the permit.

- H. No change.
- I. No change.
- J. No change.
- K. No change.
- L. No change.
- M. No change.
- N. No change.
- O. No change.
- P. No change.
- Q. No change.

R18-8-271. Procedures for Permit Administration

- A. All of 40 CRF 124 as amended as of July 1, ~~1994~~ 1995 (and no future editions), relating to HWM facilities, with the exception of §§ 124.1(b) through (e), 124.2, 124.4, 124.16, 124.20, and 124.21, is incorporated by reference and modified by the

following subsections of R18-8-271 and is on file with the DEQ and the Office of the Secretary of State.

- B. No change.
- C. No change.
- D. No change.
- E. No change.
- F. No change.
- G. No change.
- H. No change.
- I. No change.
- J. No change.
- K. No change.
- L. No change.
- M. No change.
- N. No change.
- O. No change.
- P. No change.
- Q. No change.

R18-8-273. Standards for Universal Waste Management

All of 40 CFR 273 as adopted on July 1, 1995, (and no future editions), is incorporated by reference and is on file with the DEQ and the Office of the Secretary of State.